IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Court's order whether the case is or not approved for reporting

(Chapter VIII Rule 32 (2) ((b)

Description of the Case

Criminal Appeal No. 1018 of 2001

Girdhar Singh, Decided on 12-08-04

vs

State

A.F.R. (Approved for reporting)
~~Not Approved for reporting~~

Date 12-08-04 Initials of Judge

Note :- Bench Reader will attach this at the top of the first page of the judgment when it is put up before the Judge for signature.

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

Criminal Appeal No. 1018 of 2001
(Old No. 477/1982)

Girdhar Singh
S/o Lachham Singh
R/o village Nail,
Patti Talla Chaukote
District Almora ……Appellant.

Vs.

State of Uttaranchal …..Respondent.

Date of Delivery :- 12th August, 2004

Hon'ble Mr. Justice J.C.S. Rawat)

This is a criminal appeal has been preferred by the appellant Girdhan Singh against the judgment and order dated 25.01.1982, passed by the learned Sessions Judge, Almora in sessions trial no. 12/1981, convicting the appellant for offence punishable under sections 302 I.P.C. As the accused was a child within the meaning of the U.P. Children Act 1951, the sentence of death or imprisonment of life was not awarded to him and he was directed to be sent to an "approved school" till he attains the age of eighteen years.

2. The brief facts giving rise to this appeal are that Hira Singh (PW-1) used to live in the double storeyed house in the village Nail, Patti Talla Chaukote, District Almora alongwith his wife Kalawati Devi (deceased) and two daughters namely Anandi (PW-3) and another infant daughter. The house of Hira Singh was situated away from the village Aabadi by the side of Syalda-Dotiyal Motor Road within the limits of village Nail. It was a double storeyed house and the front rooms of the ground floor were used as shops and the room behind them was used godown. The ceiling of the godown is about six feet high only and it has got an opening leading to the first floor of the house which was meant for residence of Hira Singh. This opening had a ladder which had only four steps. On 10.5.1981 Hira Singh (PW-1) went to take dinner at Dandidahar Tok in the evening and he told his cousin Parmesh (PW-3) to look after his house in his absence. During the absence of Hira Singh (PW-1), the appellant

entered into his house and went into the godown through 'Darara'. Anandi (PW-3), who was sitting on a cot in the living room, told her mother about the entry of appellant of their godown. Kalawati Devi-deceased then went down into the godown through the 'Darara' with a burning lantern (Ex.6). There seems to have scuffle between the appellant and Kalawati Devi-deceased and the appellant killed her and escaped through the 'Darara'. When Parmesh (PW-2) under the instruction of PW-1 Hira Singh at about 9PM came to the house of Hira Singh (PW-1) he saw the appellant coming out from the house of Hira Singh (PW-1) through 'Darara' and making his escape good. Anandi (PW-3) told Parmesh (PW-2) that her mother had gone in the godown in search of the appellant, who went to the godown. When Parmesh (PW-2) did not receive any response from Kalawati Devi-deceased he went inside the godown with the help of lamp-light and peeping from the aforesaid opening 'Darara', he saw Kalawati Devi-deceased lying on the ground in a pool of blood and became nervous at the sight and went away to call her brother Hira Singh (PW-1). He met Hira Singh (PW-2) in way and told him about the incident and then came to the spot and then he went to inform the villagers about the incident. Kunwar Sigh (PW-4) and Narayan Singh claimed to have seen Girdhar Singh-appellant washing his clothes at Dhara (water place). Parmesh (PW-2), Kunwar Singh (PW-4), Narayan Singh etc. the then went to search of appellant. The appellant was not found present at his house and was found concealing himself in the first floor of the deserted Goshala of Mathura Datt (PW-5) and he was then brought to the house of Hira Singh (PW-1) where he made an extra-judicial confession. Hira Singh (PW-1) then prepared the written report (Ex.ka.1) on 10.5.19871 and sent it through Pratap Singh to lodge it with the Patwari. But Pratap Singh could not lodged the report as the Patwari-Krishna Gopal (PW-7) was not found available at his headquarters and the report was given on 11.5.1981 to the Patwari by Hira Singh (PW-1). Krishna Gopal (PW-7) prepared the check report Ex.ka.21 on the basis of the written report Ex.ka.1 and reached at the spot to investigate the matter. He prepared the inquest report (Ex.ka.2) and the site plan (Ex.ka.22). He took the blood stained clothes from the person of Kalawati Devi-deceased marked Exs. 7, 8, 9 and 10 and sealed under the recovery memo of Ex.ka.3. He also took in his possession Phulli, Bichhuwa, hairs of head of

Kalawati, broken pieces of bangles, weight of 5 kilo and another weight of 1 kilo, piece of stone etc. marked Exs. 1 to 3 and 6 to 28 vide memos Ex.ka.4 and Ka.18. He then prepared the challan lash, supurdiginama of lash, sample of seal, letter addressed to the doctor for the post mortem examination marked Ex.ka.23 and Ka.26 and sent the dead body in the sealed cover for postmortem examination. He also took in possession from the person of appellant-Girdhar his pant Ex.4 and bush-shirt Ex.5 vide memo Ex.ka.19. He sent the case property for chemical examination. He submitted the chargesheet against the appellant.

3. The charge under section 302 IPC was framed against the appellant-Girdhar Singh. The appellant pleaded not guilty and claimed the trial.

4. In order to prove its case, the prosecution examined seven witnesses. Hira Singh (PW-1), who was the husband of the deceased-Kalawati Devi supported the prosecution case. Parmesh (PW-2) who was the cousin of Hira Singh (PW-1) stated that he saw the appellant coming out from the house of Hira Singh (PW-1) and making his escape good and the he went inside the godown where he saw Kalwati Devi-deceased lying on the ground in a pool of blood. Anandi (PW-3) who was the daughter of the deceased-Kalawati Devi stated that she was sitting on a cot in the living room the appellant entered into his house and went into the godown through 'Dawara'. She further stated that she reported the matter to her mother-Kalawati Devi about the entry of the appellant to their house. Her mother then went insider the godown to see the appellant. Kunwar Singh (PW-4) proved the factum of arrest of the appellant who was found concealing himself in the first floor of the deserted Goshala of Mathura Datt (PW-5). Mathura Datt (PW-5) proved the factum of preparation of inquest report.

5. Dr. V.S.Pal (PW-6) was the medical officer who conducted the autopsy of the dead body of the deceased on 12.5.1981 and found the following ante mortem injuries on the person of the deceased:-

(i) Lacerated wound 4cm x 1cm skin deep on the front of right wrist, horizontal.

(ii) Lacerated wound 5cm x 1/2 cm x skin deep vertical starting from middle of nose, upward.

(iii) Lacerated wound 3 cm x 1 cm x scalp deep anterior posterior 12cm from left ear at 11 o'clock position.

(iv) Lacerated wound 3.5cm x 1 cm x skin deep anterior posterior 1cm behind injury no.3.

(v) Lacerated wound 5cm x 1/2 cm x skin deep 2cm behind injury no.4 anterio posterior.

(vi) Lacerated wound 8cm x 4cm x bone deep on the left occuput and above, horizontal.

(vii) Contusion on the right thigh outer side 3cm x 1cm oblique down and back over tranchanter.

(viii) Abrasion with contusion on the right back 3cm above iliac crest, 6cm x 5cm horizontal.

(ix) Multiple abrasion with contusion on left scapular region, biggest 5cm x 1cm, smallest 0.5cm x 0.2cm.

(x) Abrasion on left patilla in middle 1cm x1cm.

In the opinion of the medical officer, the death was caused due to the shock and haemorrhage resulting from ante-mortem injuries which were two or three days old.

6. Krishana Gopal Pant (PW-7) was the I.O. who submitted the chargesheet. He prepared the inquest report of the dead body and the site plan. He took in the possession blood stained clothes from the person of Kalawati. The other part of the investigation was taken up by the I.O. as usual which culminated into the submission of chargesheet.

7. The learned Sessions Judge, Almora on the basis of his appreciation of the evidence in the case held that the prosecution has proved its case against the appellant-Girdhar Singh beyond reasonable doubt. As the appellant was a child at that time within the meaning of the U.P. Children Act 1951 the sentence of death or imprisonment of life was not awarded to him and he was directed to be sent to an "approved school" till he attains the age of eighteen years.

8. I have heard Sri Rajendra Kotiyal learned counsel for the appellant and Sri G. S. Sandhu learned A.G.A. I have also gone through the evidence and material on record.

9. At the outset, it need to be mentioned here that it is not disputed that the deceased-Kalawati Devi met a homicidal death on account of injuries sustained by her on the date of occurrence. Medical Officer (PW-6) had also deposed that he conducted the postmortem of dead body of the deceased (Ex.ka.20) and also found that death occurred about two or three days ago and the death was caused due to shock and haemorrhage resulting from the ante-mortem injuries.

10. Now, I have to consider whether the appellant-Cirdhar Singh was responsible for the injuries sustained by Kalwati Devi-deceased. There was no eye witness of the occurrence. At the outset, it need to be mentioned here that the prosecution case rests upon the circumstantial evidence. The law which is fairly settled about circumstantial evidence is that it would be such as to point out only to the guilt of the accused and the evidence should exclude all other hypothesis except the guilt of the accused. It is often said that though witnesses may lie, circumstances will not but at the same time it must cautiously be scrutinized to see that the incriminating circumstances are such as to lead only to a hypothesis of guilt and reasonably exclude every possibility of innocence of the accused. In order to sustain conviction on circumstantial evidence, each of the incriminating piece of circumstantial evidence should be proved by cogent and reliable evidence and the court should be satisfied that the piece of evidence taken together forge such a chain wherefrom no interference other than the guilt can be drawn.

11. The Hon'ble Apex Court in Sharad Birdhichand Sarda Vs. State of Maharashtra (AIR 1984 SC 1622) while dealing with circumstantial evidence, has been held that onus was on the prosecution to prove that the chain is complete and the infirmity or lacuna in prosecution cannot be cured by false defence or plea. The condition precedent before conviction could be based on circumstantial evidence were enumerated as under:-

(i) the circumstances from which the conclusion of guilt is to be drawn should be fully established. The circumstances concerned must or should and not may be established;

(ii) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty;

(iii) the circumstances should be of a conclusive nature and tendency;

(iv) They should exclude every possible hypothesis except the one to be proved; and

(v) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have done by the accused.

The above decision was also relied on and affirmed in the latest decision of the Hon'ble Apex Court in State of Rajasthan Vs. Rajaram 2003 Cri.L.J. p/3901.

12. Keeping in view the above principle of law, I shall consider the circumstances projected by the prosecution against he appellant. The learned Sessions Judge has not placed the reliance on the extra judicial confession made by the appellant because the appellant was roped by the village people and was kept detained. Hence, the learned Sessions Judge was of the view that it could not be a voluntary statement. Thus the extra judicial confession made by the appellant was rightly rejected. Hira Singh (PW-1) has stated that he went to take dinner at Dandidhar Tok in the evening and he told his cousin Parmesh (PW-3) to look after his house in

absence. When the deceased had gone out to bring the water form the 'Dhara' and Anandi (PW-3) was sitting on the cot in the living room the appellant came through the 'Darara' and entered into the godown. When the deceased came back after bringing water, her daughter-Anandi (PW-3) informed her about the entry of the appellant in to the godown. Thereafter the deceased went into the godown with a burning lantern. Meanwhile, Parmesh (PW-1) under the instruction of her brother Hira Singh at about 9PM came to the house. He saw the appellant coming out from the house of Hira Singh (PW-1) through 'Darara' and making his escape good. Anandi (PW-3) informed Parmesh (PW-2) that her mother had gone into the godown in search of the appellant. When no response was given by the deceased Parmesh (PW-2) entered into the godown where he saw Kalawati Devi-deceased lying on the ground in a pool of blood. He immediately went to call his brother Hira Singh (PW-1). He met with Hira Singh in the way and narrated him about the incident. Anandi (PW-3) who was five or six years old at the time of the incident was sitting on the cot in the living room at the time when the appellant entered into the room and went to the godown. She reported the matter to her mother about the entry of appellant. Thereupon, Kalawati Devi also went to the godown in search of the appellant with a burning lantern. Parmesh (PW-3) has also stated that when he was coming to the house he saw the appellant coming out from the house of the deceased. When he entered into the godown where he saw Kalawati Devi-deceased lying on the ground in a pool of blood. He immediately went to call his brother Hira Singh (PW-1).

13. The evidence of Hira Singh (PW-1), Parmesh (PW-2) and Anandi (PW-3) is credible and cogent and their evidence remained unshaken during the cross-examination. It was clearly established that the murder of the deceased was committed buy the appellant. This fact further stand corroborated from the evidence of Kunwar Singh (PW-4) who stated that he had seen the appellant washing his clothes at 'Dhara'. He was cross-examined at length but he remained unshaken. This fact also stand corroborated from the evidence of Kunwar Singh (PW-4) who claimed that the appellant was found concealing himself in deserted Goshala of Mathura Dutt (PW-5). At that time, the appellant was found wearing

drenched pant and bush-shirt in which the diluted spots of blood was also found. These clothes were recovered by Krishna Gopal Pant (PW-7) under the recovery memo Ex.ka.19. The clothes were sent for chemical examination. The chemical examiner submitted its report and found that it was the human blood and further serologist had opined that it was a human blood of Group-B. This fact clearly establishes the murder was committed by the appellant.

14. The appellant had stated under section 313 of the Code of Criminal Procedure the said pant & bush-shirt Ex.4 & 5 do not belong to him. Kunwar Singh (PW-4) and Krishna Gopal Pant (PW-7) had categorically stated that the clothes were taken into possession from the appellant and Kuwar Singh (PW-4) had also stated that the appellant was found wearing drenched pant and bush-shirt in which the diluted spots of blood was also found. Thus the ocular testimony is cogent and believable and the statement of the appellant is not believable.

15. The fact of committing the murder of the deceased by the appellant further stands corroborated by the evidence of Kunwar Singh (PW-4) and Parmesh (PW-2) who stated that they alongwith Narayan Singh and other villagers went in search of the appellant found him to be concealing himself in Goshala of Mathura Datt (PW-5). If the appellant would not have committed the murder of the deceased he would not have concealed himself in a deserted Goshala and he would have been present in his house when the search was made. The evidence of Kunwar Singh (PW-4) and Parmesh (PW-2) remained unshaken during the cross-examination.

16. Patwari-Krishna Gopal Pant (PW-7) who was the I.O. went at the spot and prepared the inquest report (Ex.ka.2) and the site plan (Ex.ka.22). He took the blood stained clothes from the person of Kalawati Devi-deceased marked Exs. 7, 8, 9 and 10 and sealed under the recovery memo of Ex.ka.3. he took in his possession Phulli, Bichhuwa, hairs of heard of Kalawati, broken pieces of bangles, weight of 5 kilo and another weight of 1 kilo, a piece of stone etc. marked Es. 1 to 3 and 6 to 28 vide memos Ex.ka.4 and Ka.18. The recovery of these articles clearly reveal that there was a scuffle between the appellant and the deceased in the

godown and the appellant struck her by the weight. This fact stand corroborated from the evidence of Dr. V.S. Pal (PW-6) - the medical officer, who conducted the autopsy of the dead body of the deceased, stated that the injury nos. 8, 9 and 10 are not possible by the impact of the weight and rest of the injuries are possible due to impact of weight. The medical officer also stated that the death was caused to the shock and haemorrhage resulting from ante-mortem injuries which were two or three days old.

17. The learned counsel for the defence has submitted that there is delay in lodging the FIR with the Patwari. The incident took place on 10.5.1981 at about 9PM and the FIR was lodged on 11.5.1981 at about 4PM. The headquarter of the Patwari was about 3KM from the place of occurrence. The learned A.G.A. refuted the contention. Mathura Datt (PW-5) has stated that Hira Singh (PW-1) had written the report on 10.8.2004 and sent it through Pratap Singh to lodge with the Patwari as the Patwri was not found present at his headquarter and the report was not lodged. Pratap Singh came back without lodging the report on 10.5.1981. Krishana Gopal Pant (PW-7) admitted that he was out of his headquarter on 10.5.1981 for in connection with a meeting at Ranikhet and he returned to his headquarter on 12.5.1981. Hira Singh (PW-1) lodged the report on 11.5.1981 at the headquarter of Patgwari when he came back from Ranikhet. The incident took place in the hilly area where the means of communication and transport are not good. The submission of the learned counsel for the defence in insignificant because the prosecution has sufficiently explained the delay in lodging the FIR.

18. The learned counsel for the defence further contended that the inquest was made in the night at about 11PM which is against the regulations. The defence cannot take the benefit of the remissness of the I.O. as the prosecution has proved its case beyond reasonable doubt. It is well settled law that even if the investigation is defective, that pales into sign when ocular testimony is found credible and cogent. In the case of a defective investigation the court has to be circumspect in evaluating the evidence. But it would not be right in acquitting an accused person solely on account of the defect; to do so would tantamount

to playing into the hands of the investigating officer if the investigation is designedly defective. **{See Dhanaj Singh @ Shera & others Vs. State of Punjab 2004 {3} SCC p/654, Chhotu Vs. State of Maharashtra 1997 Cri.L.J. 4394(SC), Karnel Singh Vs. State of M.P. 1995 CRL. L.J. 4173}**

19. In view of the foregoing discussion, I am of the view that the prosecution has proved its case against the appellant and the charge of murder punishable under section 302 IPC is proved beyond reasonable doubt.

20. The learned Sessions Judge had not awarded the sentence of death or transportation of life to the appellant and the appellant was directed to undergo in an "approved school" till he attains the age of eighteen years as he was a child within the meaning of U.P. Children Act 1951. The appellant was sent to District Jail Almora with the direction to the Superintendent of the Jail Almora that he would send the appellant to some "approved school" under the U.P. Children Act. The aforesaid sentence was passed on 25.1.1982 and the appellant preferred an appeal before the Allahabad High Court where from he was granted bail vide order dated 23.2.1982. At that time the appellant was about 12 years old and it is not disputed that now the appellant is more than eighteen years old. Therefore there is no question to sent the appellant to an "approved school" as proved under the U.P. Children Act or to any Special Home as provided under the Juvenile Justice Act, 1986 or under the Juvenile Justice (Care and Protection of Children) Act, 2000. In similar situation, it has been held in **Bhoop Ram Vs. State of U.P. SCC 1989 (3) p/1:-**

"Since the appellant is now aged more than 28 years of age, there is no question of the appellant now being sent to an approved school under the U.P. Childern Act for being detained there. In a somewhat similar situation, this Court held in Jayendra Vs. State of U.P. {1981 (4) SCC 149} that where an accused had been wrongly sentenced to imprisonment instead of being treated as a "child" under Section 2(4) of the U.P. Children Act and sent to an approved school and the accused had crossed the maximum age of detention in an approved school viz. 18 years, the course to be

followed is to sustain the conviction but however quash the sentence imposed on the accused and direct his release forthwith.

21. Keeping in view of above decision, the appeal is partly allowed. The conviction of the appellant under section 302 IPC is sustained but however the sentence awarded per judgment and order dated 25.1.1982 to appellant is quashed. He shall be released forthwith, if he is not in the "approved school" or in jail or in "Special Home". If he is not in the approved school or in jail or in "Special Home" he need not surrender. His bail bonds are canalled and sureties discharged.

(J.C.S. Rawat, J.)

Dated 12.8.2004

LSR

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